

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No.: 10-cr-00028-PAB-1

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. STEVEN CLAY ROMERO,

Defendant.

**ELEMENTS OF OFFENSE AND
STATEMENT OF FACTS RELEVANT TO SENTENCING**

The United States of America (“the Government”), by and through Michelle M. Heldmyer, Assistant United States Attorney for the District of Colorado, and the defendant, Steven Clay Romero, personally and by counsel, Edward A. Pluss, submit the following Elements of Offense and Statement of Facts Relevant to Sentencing pursuant to D.C.Colo.LCrR 11.1.

I. PLEA

Defendant is pleading guilty to Count One of the Indictment which charges him with Aggravated Animal Cruelty, in violation of 18 U.S.C. § 13 (the Assimilative Crimes Act) and Colorado Revised Statute § 18-9-202(1.5)(b). This is the sole and only count charging the Defendant.

There is no agreement by the parties regarding sentencing and no other agreements by the Government.

II. ELEMENTS OF THE OFFENSE

The essential elements of the crime of Aggravated Animal Cruelty, in violation of 18 U.S.C. § 13 and C.R.S. § 18-9-202(1.5)(b), are:

1. That the defendant,
2. At or about the date charged,
3. Knowingly,
4. Tortured, needlessly mutilated or needlessly killed any animal.

Source: Colorado Jury Instruction 35:12.

III. STATUTORY PENALTIES

The maximum statutory penalty for a violation of C.R.S. 18-9-202(1.5)(b) pursuant to 18 U.S.C. § 13, is like punishment provided by C.R.S. 18-9-202(1.5)(b). Under state law a violation of C.R.S. 18-9-202(1.5)(b) is a Class 6 felony. The presumptive sentence for violation of a Class 6 felony is 12 to 18 months imprisonment. Pursuant to C.R.S. § 18-1.3-401(9) if there is present any enumerated sentence-enhancing circumstances and if the court sentences a defendant to incarceration, the sentence must be a minimum of the presumptive range, 12 months, but not more than twice the maximum term authorized in the presumptive range, 36 months; not more than a \$100,000.00 fine, or both; not more than one year of supervised release; and a \$100.00 special assessment fee.

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury.

A violation of the conditions of probation or supervised release may result in a separate prison sentence.

**IV. STIPULATION OF FACTUAL BASIS AND FACTS
RELEVANT TO SENTENCING**

The parties agree that there is no dispute as to the material elements that establish a factual basis for the offense of conviction.

Pertinent facts are set out below in order to provide a factual basis for the plea. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea. (§ 6B1.4(b))

The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the advisory guideline computation (§ 1B1.3) or to sentencing in general (§ 1B1.4). Nor is the Court or Probation precluded from the consideration of such facts. In “determining the factual basis for the sentence, the Court will consider the stipulation [of the parties], together with the results of the pre-sentence investigation, and any other relevant information.” (§ 6B1.4 Comm.)

The parties agree that the Government’s evidence would be:

In the early morning hours of December 30, 2009, a carcass of a large mixed-breed dog with a rope tied around its neck was discovered in the Colorado National Monument in Mesa County, Colorado. Evidence from surveillance photos and marks left in the snow indicated the dog had been dragged from the back of a pick-up truck. The Colorado

National Monument is within the territorial jurisdiction of the United States and the District of Colorado.

Earlier that evening, the Defendant had taken the dog alive in the back of a pick-up truck to Colorado National Monument. In order to kill the dog, the Defendant tied a rope to the dog's neck and dragged the dog behind the truck until the dog was dead. By doing so, the Defendant needlessly mutilated, tortured and killed the dog.

V. SENTENCING COMPUTATION

The parties understand that the Court may impose any sentence up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. (§ 6B1.4(d)) The Court is free, pursuant to §§ 6A1.3 and 6B1.4, to reach its own findings of fact and sentencing factors considering the parties' stipulations, the pre-sentence investigation, and any other relevant information. (§ 6B1.4 Comm.; § 1B1.4)

To the extent the parties disagree about the sentencing factors, the computations below identify the factors which are in dispute. (§ 6B1.4(b)).

The November 1, 2009, Edition of the Sentencing Guidelines is applicable to this case.

A. Pursuant to § 2X5.1 if the offense is a felony for which no guideline has been expressly promulgated, apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. 3553 shall control, except

that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable. The parties do not believe a sufficiently analogous guideline exists. The sentence would be limited, in any case, by the statutory maximum.

B. The parties understand that Defendant's criminal history computation is tentative. The criminal history category is determined by the Court. The parties believe that should the Defendant's criminal history category be calculated that he is either a Criminal History Category IV or V.

C. Career offender/criminal livelihood/armed career criminal adjustments would not apply.

D. Pursuant to guideline § 5D1.2, if the Court imposes the term of supervised release, that term shall be not more than 1 year.

VI. ADDITIONAL INFORMATION REGARDING THE PLEA

This document states the parties' entire understanding of the circumstances surrounding the defendant's guilty plea. There are no promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied.

Neither the Government nor Defendant has relied, or is relying, on any terms, promises, conditions or assurances not expressly stated herein.

Date: _____
STEVEN CLAY ROMERO
Defendant

Date: _____
EDWARD A. PLUSS
Attorney for Defendant

Date: _____
MICHELLE M. HELDMYER
Assistant U.S. Attorney